



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2005

Ms. Yvonne Qiyamah Taylor
Attorney at Law
7419 Hickory Canyon Court
Houston, Texas 77396

OR2005-00984

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 217957.

The North Forest Independent School District (the "district"), which you represent, received a request for the following: (1) documents pertaining to the "creation, authorization, posting, and/or deletion" of assistant principal employment positions within the district; (2) all records pertaining to applications for such positions since January of 2000; (3) information pertaining to assistant principals of the district since January of 2000; (4) records "regarding the solicitation, employment, and retention of non-United States citizens" by the district, including "H1-B Visa professionals" and complaints filed against the district for hiring such professionals; and (5) the current enrollment of each grade in every district elementary school. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that you did not submit any requested information regarding H1-B employees and related complaints regarding their employment. Therefore, to the extent that this information existed when the district received the request for information, we assume the district has released it. If the district has not released any such information, it must release that information at this time. See Gov't Code §§ 552.301(a), 552.302; cf. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App-Dallas 1999, no pet.) (section 552.103 is not compelling reason to overcome presumption of openness of section 552.302). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Next, you assert that portions of the request for information are overly broad and that "at a minimum, [the requestor] should be required to narrow his request." If a request for information is not clear as to the information requested or if a large amount of information is requested, a governmental body may ask the requestor to clarify or narrow the request. See Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). However, we note that a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. See Open Records Decision No. 561 at 8-9 (1990). A governmental body may not refuse to comply with a request on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

Next, we note that the submitted information contains Announcement of Vacancy documents. Section 552.022 provides that "information regarded as open to the public under an agency's policies" is public information and not excepted from required disclosure under the Act unless it is expressly confidential under other law. Gov't Code § 552.022(a)(15). Accordingly, the district may not withhold this information unless it is made confidential under other law. See *id.* You do not cite to any specific law, and we are not aware of any, that would make this information confidential under other law. See Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). In addition, section 552.103 is a discretionary section that protects a governmental body's interests and may be waived. See *Dallas Morning News*, 4 S.W.3d at 475-76 (section 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section subject to waiver). Accordingly, the district may not withhold these documents under section 552.101 or 552.103 of the Government Code, and they must be released to the requestor. We will next address your arguments against disclosure of the remaining information at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at

issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). This office has stated that a pending Equal Employment Opportunity Commission ("EEOC") complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982).

You have submitted information to this office showing that, prior to the district's receipt of the request for information, the requestor filed with the Texas Workforce Commission (the "commission") a complaint alleging employment discrimination, and that the commission referred the complaint to the EEOC for investigation. You also indicate that this complaint is pending. We note that the EEOC generally defers jurisdiction to the commission over complaints alleging employment discrimination, and the commission operates as a federal deferral agency under section 2000e-5 of title 42 of the United States Code. Based on your representations and our review of the submitted documents, we find you have demonstrated that litigation was reasonably anticipated when the district received the request for information. Our review of the information at issue also shows that it is related to the anticipated litigation for purposes of section 552.103(a). Thus, the district may withhold under section 552.103(a) the submitted information that is not subject to section 552.022.

We note, however, that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

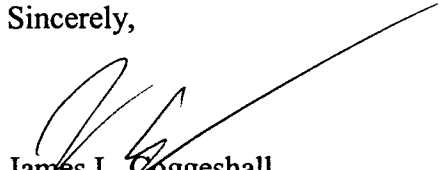
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 217957

Enc. Submitted documents

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(w/o enclosures)